

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 60 of 2020

In the matter of:

Vipul Sez Developers Pvt. Ltd. & Anr.

....Appellants

Vs.

Solitaire Capital India & Ors.

....Respondents

Present:

Appellants: Mr. Arun Kathpalia, Sr. Advocate with Mr. SarojanandJha, Mr. Suraj Malik, Mr. Tushar Kumar and Mr. Kauser Husain, Advocates for Appellant.

**Respondents: Mr. Sumesh Dhawan, Mr. Vasala Kak and Mr. Apoorva Chawdhary, Advocates for R-1.
Mr. Ashish Mohan, Advocate for R-2.
Ms. Renu Gupta, Advocate for R-7 & R-8.
Mr. Rahul Malhotra, Mr. Shubham Paliwal and Ms. Himanshi Madan, Advocates for R-9.**

ORDER

13.03.2020: Heard both sides.

The Learned Counsel for the Appellants submits that the Appellants have projected the instant Company Appeal (AT) No. 60 of 2020 as against Order dated 14.02.2020 in C.A. 83/2020 in CP 94/241-242 (ND) 2019 passed by the National Company Law Tribunal, New Delhi, Bench III whereby and whereunder at Paragraph 9, 15, 16 and 19 it is observed as follows:

“The Ld. Counsel for Respondent No. 1 & 2 has further referred to CP-94 of 2019 and submitted that 7 Acres land purchased under Sale Deed No. 3453 was the part of the JDCA Project land, however, subsequently, and Memorandum of Understanding (hereinafter referred as “MoU”) dated 13.09.2008 was signed by 12 parties, by which, the project land under Agreement dated

29.08.2006 was revised and 7 acres of land did not form part of the said project. He has referred the recitals of the MoU dated 13.09.2008, which provide that the parties to the MoU agreed that any piece and parcel of land not forming part of revised project land, as on the date of MoU but owned by Vipul Group and Karamchand Realtech Private Limited shall have a right to deal with the said land including but not limiting to transfer the same to any other entity at their sole discretion. Based on this, it is submitted by the Learned Counsel for the Respondents that the portion of land measuring 7 acres is not forming the part of revised project land. Therefore, the Vipul Group and Karamchand Realtech Private Limited has a right to deal with the said land. It is pertinent to note that the MoU dated 13.09.2008, provides that any land which is not forming the part of the revised project land is to be dealt with any manner by Vipul Group and Karamchand Realtech Private Limited. However, the MoU did not provide specifically that 7 acres of land, which is owned and possessed by first Respondent Company viz., Vipul SEZ Developers Private Limited, is to be taken away by Vipul Group and Karamchand Realtech Private Limited. The consequence of signing the MoU dated 13.09.2008, is that any land which is in excess of 138.568 Acres will be dealt by the Vipul Group and Karamchand Realtech Private Limited. The land, if any, to be dealt with by the Vipul

Group and Karamchand Realtech Private Limited is neither demarcated nor identified in any way in the MoU. Otherwise also there is nothing on record to suggest as to why Vipul Group and Karamchand Realtech Private Limited are entitled to take away 7 Acres of land first Respondent Company without paying any consideration there for.

From the perusal of the record, it is an admitted factual position that 7 acres of land was registered in the name of the first Respondent Company vide Sale Deed No. 3543 dated 12.05.2006, with regard to which a Resolution has been passed by the Board of Directors of first Respondent on 13.04.2019 giving authority to Vipul Group and Karamchand Realtech Private Limited to deal with the land in any manner. The Board resolution is under challenge and the transaction is pertaining to the related party, which prima-facie is in violation of the provisions of Section 188 of the Companies Act, 2013 and in case 7 acres of land is sold by the Respondents during the pendency of Application filed under Section 8 of Arbitration Act, the Applicants/Petitioners will become remediless, which eventually will lead to multiplicity of the litigation.

The Applicants/Petitioners have made a case prima-facie for grant of ad-interim injunction in relation to 7 acres of land, the balance of convenience is in favour of the Applicants/Petitioners and in

case ad-interim injunction is not granted, till the outcome of the Application filed under Section 8 of the Arbitration Act, by the Respondent, the first Respondent Company and its Shareholders will lose the property. Therefore, issuance of ad-interim injunction is necessary to protect the right of the Applicants/Petitioners, the Company, and its Shareholders, which will not cause prejudice to the respondents in any way.

*In view of the discussion made above this Tribunal is inclined to **allow** the Application and the Respondents are **restrained** from dealing with 7 acres of land registered in the name of the first Respondent Company under Sale Deed No. 3543 dated 12.05.2006, in any manner whatsoever, till the application filed under Section 8 of Arbitration Act is decided and in the event, the said Application is dismissed, till the final disposal of the main Company Petition No. 94 of 2019.”*

The Learned Counsel for the Appellant brings to the notice of this Tribunal that the Hon'ble Supreme Court in Civil Appeal No. 9400 of 2019 Solitaire Capital India & Ors. Vs. Vipul Sez Developers Pvt. Ltd. & Anr. on 09.01.2020 at Paragraph 2 to 4 had observed the following and resultantly disposed of the Appeal:

“The Appeal is outcome of an interim order passed by the NCLT which has been dealt with by the NCLAT in the Impugned Order. As the application under Section 8 of the Arbitration and Conciliation Act, 1996 is pending before the

NCLT, we request the NCLT to decide the same finally, as agreed to by the Learned Counsel for the parties, within a period of ten days.

No further order is required to be passed at this stage. In case any order is passed, it is open to the parties to take steps in accordance with law for redressal of their grievance.

Interim order passed by this Court on 17.12.2019 shall continue to operate for a period of ten days from today.”

At this Juncture, the Learned Counsel for the Appellant refers to the Judgment in Company Appeal (AT) 268 of 2019 Solitaire Capital India & Ors. Vs. Vipul Sez Developers Pvt. Ltd. & Anr. wherein on 02.12.2019 this Tribunal at Paragraph 8 had observed the following:

“In the aforesaid background, the Tribunal rightly held that predominant focus in a Company Petition under Section 241-242 of the Companies Act, 2013 is to safeguard the interest of the Company. However, if a party raises the issue of maintainability of the petition under Section 241-242 by filing a petition under Section 8 of the Arbitration and Conciliation Act, 1996, the Tribunal rightly held that such issue is to be decided but after the pronouncement by the Arbitral Tribunal and in the meantime passed interim direction as it thought fit and proper in the interest of the company. If the Tribunal is required to pass further ad-interim relief order, it may wait till the decision of the Arbitral Tribunal and then decide the main issue of maintainability and

then decide on the question of passing further interim order during the pendency of the petition, if it is held to be maintainable.”

It transpires from the Hon'ble Supreme Court Order in the aforesaid Civil Appeal No. 9400 of 2019 dated 09.01.2020 as stated (Supra) that the Hon'ble Supreme Court had requested the National Company Law Tribunal, New Delhi Bench III to decide the Section 8 application filed under Arbitration and Conciliation Act 1996 within a period of ten days. Furthermore, the Hon'ble Supreme Court had directed the Interim Order passed on 17.12.2019 shall continue to operate for a period of ten days from 09.01.2020.

The primordial grievance of the Appellants is that besides the Appellants having been aggrieved against the Impugned Order dated 14.02.2020, passed by the National Company Law Tribunal, New Delhi Bench III, the Tribunal had not disposed of the Section 8 application bearing no. CA 422 of 2019 pending on its file and instead passed the Impugned Order. It also comes to the notice of this Tribunal the matter is slated for hearing on 17.04.2020.

On a careful perusal of the Judgment passed by the Hon'ble Supreme Court in Civil Appeal No. 9400/19 dated 09.01.2020 this Tribunal comes to resultant conclusion that the said Judgment of the Hon'ble Supreme Court is binding under Article 141 of the Constitution of India. Furthermore, the CA No. 422 of 2019 pending on the file of National Company Law Tribunal, New Delhi Bench Court No. III is directed by the Appellate Tribunal to be taken up by the National Company Law Tribunal, New Delhi Bench, Court No. III on a day to day basis from 17.03.2020 without granting adjournments, and to

dispose of the same within one week thereafter and to report compliance to this Tribunal. It is open to the respective parties to raise all factual and legal issues before the NCLT, New Delhi Bench III in CA No. 422 of 2019 and the said Adjudicating Authority shall take note of the same and to pass a reasoned order on merits, in accordance with Law. Before parting with the case, this Tribunal makes it lucidly clear that it has not traversed upon the merits of the pending subject matter, nor dealt with the same by delving deep, because of the simple reason that if any view is expressed one way or other the same may affect the interest of the concerned parties to the Litigation.

The Registry is directed to list the matter on **31st March, 2020**.

[Justice Venugopal M.]
Member (Judicial)

[V.P. Singh]
Member (Technical)

[Shreesha Merla]
Member (Technical)

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